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09/648,033	08/25/2000	Mansukh M. Patel	112703-017	5292

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 999

Application Number: 09/648,033  
Filing Date: August 25, 2000  
Appellant(s): PATEL ET AL.

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For Appellant

MAILED  
JAN 13 2004  
GROUP 1700

EXAMINER'S ANSWER

This is in response to the brief on appeal filed October 3, 2003.

(1) ***Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

(2) ***Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

However, appellant's statement is inaccurate and incomplete since there is a related appeal, viz. Appeal No. 2003-0418.

(3) ***Status of Claims***

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 1-20.

(4) ***Status of Amendments After Final***

Art Unit: 1761

The appellant's statement of the status of the amendment after final rejection<sup>e</sup> contained in the<sup>e</sup> brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 1-20 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

4,518,615	Cherukuri et al	5-1985
4,794,003	Cherukuri et al	12-1988
4,452,820	D'Amelia et al	6-1984
4,246,286	Klose	1-1981

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 and 8-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (4,518,615, columns 5 and 6, Table III, Run D and

Art Unit: 1761

claims 1 and 11), Cherukuri et al (4,794,003, columns 2 and 6-8 and claims 12 and 19) or D'Amelia et al (columns 3, 5, 6 and 10).

Appellant is referred to paragraph No. 5, Paper No. 5 for a description of each primary reference. It would have been obvious to select lecithin as the emulsifier in each primary reference since lecithin is a viable alternative to each of the other emulsifiers described in each primary reference. Although the maximum amount of lecithin in each primary reference is 10% by weight, which is within the range claimed by appellant in claims 1-7 and 14-20, finding the optimum amount of lecithin to be included in the gum base, as in appellant's claims 8-13, would require nothing more than routine experimentation by one reasonably skilled in this art.

Claim 7 is rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 5, and paragraph No. 7.

**(11) Response to Argument**

Appellant's comments with regard to each primary reference are without merit. Cherukuri et al ('003) clearly recites "without the use of a filler" (column 2, line 56) and includes lecithin (column 6). Cherukuri et al ('615) clearly suggests a gum base absent a filler and including an emulsifier, viz glyceryl monostearate (Table III, Run D) and also requires the use of an emulsifier, e.g., Lecithin or glyceryl monostearate (column 5, lines 1-2). D'Amelia et al discloses "0% filler" (column 5, lines 38-39 and column 10, line 61) and the use of lecithin (column 6, lines 20-25). The disclosure in each of these patents that the use of filler is optional does not detract from their teaching that a gum base without filler but including lecithin is known in the art. Additionally, the chewing gum

Art Unit: 1761

prepared in each primary reference will achieve appellant's result of reduced adhesion to environmental surfaces since appellant's claimed gum composition is disclosed by each primary reference.

Appellant's comments with regard to Table III, Run D in Cherukuri et al (4,518,615) are not persuasive. Although Run D does not disclose lecithin as the emulsifier, it does use glyceryl monostearate, for which it would have been obvious to substitute lecithin since both are emulsifiers that can be used alternatively according to Cherukuri et al ('615, column 5, lines 1-2). The negative remark about Run D mentioned in column 9, lines 44-47 of Cherukuri et al does not alter the fact that appellant's composition is clearly suggested from the teachings of Cherukuri et al.

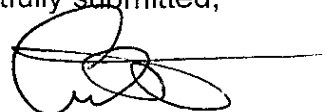
Appellant's remarks with respect to Cherukuri et al (4,794,003) are equally unpersuasive. Cherukuri et al clearly disclose "without the use of a filler" (column 2, line 56) and suggests an amount of an emulsifier within appellant's claimed range, which emulsifier could be lecithin (column 6, lines 34-45).

Finally, whereas the primary references do not necessarily seek to achieve appellant's objective of a reduced adhesion chewing gum, each reference is directly relevant as a result of suggesting appellant's method and claimed composition, the intended use of which is entitled to no patentable weight in appellant's claims

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 1761

Respectfully submitted,



ARTHUR L. CORBIN  
PRIMARY EXAMINER

A. Corbin/dh  
December 9, 2003

Conferees

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